

Kimmel & Silverman, P.C.
1930 East Marlton Pike, Suite Q29
Cherry Hill, New Jersey 08003
Telephone: 856-429-8334
Attorney of Record: Amy Bennecoff (AB0891)
Attorney for Plaintiff

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW JERSEY**

COMPLAINT

JAMES DURST (“Plaintiff”), by his attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against DYNAMIC RECOVERY SOLUTIONS (“Defendant”):

INTRODUCTION

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA"), which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices and the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* ("TCPA").

JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy,” and 28 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

3. Defendant conducts business in the State of New Jersey and therefore, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

PARTIES

6. Plaintiff is a natural person residing in Pennsauken, New Jersey, 08110.

7. Plaintiff is a person granted a cause of action under the FDCPA. See 15 U.S.C. §1692k(a), and Wenrich v. Cole, 2000 U.S. Dist. LEXIS 18687 (E.D. Pa. Dec 22, 2000).

8. Defendant is a national debt collection company with corporate headquarters located at 135 Interstate Boulevard, Unit 6, Greenville, South Carolina, 29615.

9. Defendant is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6), and repeatedly contacted Plaintiff in an attempt to collect a debt.

10. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

PRELIMINARY STATEMENT

11. The Fair Debt Collection Practices Act (“FDCPA”) is a comprehensive statute, which prohibits a catalog of activities in connection with the collection of debts by third parties. See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that violates its provisions, and establishes general standards of debt collector conduct, defines abuse, and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or unconscionable conduct, both generally and in a specific list of disapproved practices.

1 12. In particular, the FDCPA broadly enumerates several practices considered
 2 contrary to its stated purpose, and forbids debt collectors from taking such action. The
 3 substantive heart of the FDCPA lies in three broad prohibitions. First, a “debt collector may not
 4 engage in any conduct the natural consequence of which is to harass, oppress, or abuse any
 5 person in connection with the collection of a debt.” 15 U.S.C. § 1692d. Second, a “debt
 6 collector may not use any false, deceptive, or misleading representation or means in connection
 7 with the collection of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use
 8 unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f.
 9 The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not there
 10 exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct which
 11 harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in
 12 connection with the collection of a debt.

14 13. In enacting the FDCPA, the United States Congress found that “[t]here is
 15 abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many
 16 debt collectors,” which “contribute to the number of personal bankruptcies, to marital instability,
 17 to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. § 1692a. Congress
 18 additionally found existing laws and procedures for redressing debt collection injuries to be
 19 inadequate to protect consumers. 15 U.S.C. § 1692b.

20 14. Congress enacted the FDCPA to regulate the collection of consumer debts by debt
 21 collectors. The express purposes of the FDCPA are to “eliminate abusive debt collection
 22 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt
 23 collection practices are not competitively disadvantaged, and to promote consistent State action
 24 to protect consumers against debt collection abuses.” 15 U.S.C. § 1692e.

FACTUAL ALLEGATIONS

15. Beginning in or around February, 2011 and continuing through April, 2011, Defendant made continuous and repeated calls to Plaintiff's cellular telephone number in an attempt to collect an alleged consumer debt belonging to "Christy Durst".

16. Upon information and belief, the alleged debt Defendant was seeking to collect arose out of transactions, which were primarily for personal, family, or household purposes.

17. Plaintiff spoke with Defendant's representatives on numerous occasions to advise that "Christy Durst" did not live with him, that Defendant was dialing the wrong telephone number, and demanded that Defendant cease its communication with Plaintiff over the alleged debt.

18. Despite Plaintiff's instructions not to contact him, Defendant continued to contact Plaintiff in its attempts to collect a debt.

19. During one conversation, Defendant's representative admitted that Defendant was using a robo dialer to call Plaintiff and that is why he was continuing to receive telephone calls despite telling Defendant it had the wrong person and telephone number.

20. The repetitive calls to Plaintiff were disturbing, harassing, and an invasion of his privacy.

21. Defendant failed to investigate or verify contact information prior to and after calling Plaintiff.

22. Defendant failed to update its records to avoid further harassment of Plaintiff.

23. The repetitive calls to Plaintiff were harassing and unfair.

24. Defendant placed these repeated harassing telephone calls to Plaintiff with the

1 intent to annoy, harass, abuse, upset, deceive and coerce payment from Plaintiff for a debt he
2 does not owe.

3 CONSTRUCTION OF APPLICABLE LAW

4 25. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay &
5 Durand, 103 F.3d 1232 (5th Cir. 1997). “Because the Act imposes strict liability, a consumer
6 need not show intentional conduct by the debt collector to be entitled to damages.” Russell v.
7 Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233
8 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector’s legal status
9 violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

10 26. The FDCPA is a remedial statute, and therefore must be construed liberally in
11 favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The
12 remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit
13 & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). “Because the FDCPA, like the
14 Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be
15 construed liberally in favor of the consumer.” Johnson v. Riddle, 305 F. 3d 1107 (10th Cir.
16 2002).

17 27. The FDCPA is to be interpreted in accordance with the “least sophisticated”
18 consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano
19 v. Harrison, 950 F. 2d 107 (3rd Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc.,
20 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not “made for the protection of experts, but for
21 the public - that vast multitude which includes the ignorant, the unthinking, and the credulous,
22 and the fact that a false statement may be obviously false to those who are trained and
23 experienced does not change its character, nor take away its power to deceive others less

1 experienced.” Id. The least sophisticated consumer standard serves a dual purpose in that it
2 ensures protection of all consumers, even naive and trusting, against deceptive collection
3 practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of
4 collection notices. Clomon, 988 F. 2d at 1318.

5 **COUNT I**

6 **DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT**

7 28. In its actions to collect a disputed debt, Defendant violated the FDCPA in one or
8 more of the following ways:

- 9 a. Defendant violated of the FDCPA generally;
- 10 b. Defendant violated § 1692b(2) of the FDCPA by informing Plaintiff that
11 another person owed a debt;
- 12 c. Defendant violated § 1692b(3) of the FDCPA by calling Plaintiff more than
13 once in connection for the collection of a debt for another individual;
- 14 d. Defendant violated § 1692c(b) of the FDCPA by communicating with
15 Plaintiff about a debt allegedly owed by another individual;
- 16 e. Defendant violated §1692d of the FDCPA by harassing Plaintiff in
17 connection with the collection of an alleged debt;
- 18 f. Defendant violated §1692d(5) of the FDCPA, when it caused the Plaintiff's
19 telephone to ring repeatedly or continuously with the intent to harass, annoy
20 or abuse Plaintiff;
- 21 g. Defendant violated §1692e of the FDCPA, when it used false, deceptive or
22 misleading representations or means in connection with the collection of a
23 debt;
- 24 h. Defendant violated §1692f of the FDCPA by using unfair and unconscionable

means with Plaintiff to collect or attempt to collect a debt;

- i. Defendant acted in an otherwise deceptive, unfair and unconscionable manner and failed to comply with the FDCPA.

WHEREFORE, Plaintiff, JAMES DURST, respectfully prays for a judgment as follows:

- a. All actual compensatory damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);
 - b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to 15 U.S.C. § 1692k(a)(2)(A);
 - c. All reasonable attorneys' fees, witness fees, court costs and other litigation costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3);
 - d. Any other relief deemed appropriate by this Honorable Court.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, JAMES DURST, demands a jury trial in this case.

CERTIFICATION PURSUANT TO L.CIV.R.11.2

I hereby certify pursuant to Local Civil Rule 11.2 that this matter in controversy is not subject to any other action pending in any court, arbitration or administrative proceeding.

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DATED: 10/05/11

RESPECTFULLY SUBMITTED,

KIMMEL & SILVERMAN, P.C.

By: /s/ Amy L. Bennecoff

Amy L. Bennecoff
Attorney ID # AB 0891
Kimmel & Silverman, P.C.
1930 E. Marlton Pike, Suite Q29
Cherry Hill, New Jersey 08003
Phone: (856) 429-8334
Facsimile (856) 216-7344
Email: abennecoff@creditlaw.com